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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,219	02/20/2004	Ronald K. Williams	22514	7406

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EXAMINER

PRATT, HELEN F

ART UNIT	PAPER NUMBER
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1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/18/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/783,219

Applicant(s)

WILLIAMS ET AL.

Examiner

Helen F. Pratt

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baldwin et al. (2004/0170724 A1) in view of Patel et al. (2003/0104108 a1), Johnson (3,536,494) and Michaelson (4,414,198) and Soulis and Kurland.

Baldwin et al. disclose a method of fortifying beverage products with minerals. The minerals are mixed with lactobionic acid and an edible acid (supplement base). (abstract). The reference discloses that the calcium complex can be dissolved in a single serving size beverage (page 5, 0029). Other mineral complexes can be made (page 5, claim 1, page 6, claim 6). Claim 1 differs from the reference in the step of

Art Unit: 1761

packaging the nutritional composition into a single serving dispenser. However, it is known to make single serving sizes of vitamins and minerals or nutritional supplements as in tablets and pills. Patel et al. disclose that it is known to use a premix of vitamins in a single serving (abstract and page 4, 0036, (middle)). Johnson discloses making a multi-vitamin composition for food products in which the vitamin is imbedded in lactose (abstract). The multi-vitamin composition is sold is packaged and sold in pre-determined weights (col. 2, lines 18-30). The composition is added to milk or other food products and can be in the form of packets (col. 3, lines 34-40, lines 47-53, lines 60-75, col. 4, lines 1-10, 43-54, 73-75). Michaelson discloses that it is known to make a rapidly water-disintegratable tablet (abstract). The milk tablets can be dissolved in water (col. 4, lines 60-70). Soulis discloses a beverage cup, which contains a tablet in a wrapper, which attaches to the bottom of the cup (figures 1-7 and page 1, 2nd col. lines 67-88). Last, Kurland discloses a closure cap, which has sugar and cream in the lid (fig. 4. col. 2, lines 48-73). Therefore, it would have been obvious to package a nutritional composition as disclosed by Johnson, and to substitute for tablets of Soulis and or the cream of Kurland with known nutritional supplements as made by Johnson in the process of Baldwin in order to fortify a single serving of beverage with a packaged nutritional product.

Claim 2 further requires combining the nutritional composition and the single serving beverage at the point of purchase. However, nothing new is seen in making known items available for purchase, as this is a matter of convenience and choice.

Therefore, it would have been obvious to make known compositions and beverages available at the point of purchase.

Claim 3 further requires the use of creamer ingredients with the supplement base to make a nutritional composition. However, as above milk tablets are known (Michaelson), and it is known to make mineral complexes as shown by Baldwin to add to beverage products. Johnson also enriches milk and similar products with multivitamins (col. 2, lines 18-20). Therefore, it would have been obvious to include creamer ingredients, as cream is a product made from milk.

It would have been obvious to include health promoting creamer ingredients as that is what vitamins are as in claim 4 and to use non-dairy creamer instead of cream, which is a known substitute for cream in the nutritional composition as in claim 5 and to use a dairy based creamer, which is a milk product as above as in claim 6.

Claim 7 further requires making a supplement base in the form of a liquid, powder or solid as in claim 7. Soulis discloses a tablet or powder (col. 1, lines 30-40). Therefore, it would have been obvious to make a supplement in the claimed form as disclosed by Soulis.

The limitations as to the composition have been disclosed above as in claim 8. Baldwin et al. disclose that the mineral complex can be added to non-nutritive ingredients (minimal nutritional value), which make a beverage (0025). Nothing new is seen in adding the nutritional supplement to coffee tea or soda as in claim 9, as they are also non-nutritive. Therefore, it would have been obvious to add nutritional

Art Unit: 1761

supplements to beverages containing minimal nutritional value as shown by the combined references.

The limitations as in claims 10-12 have been disclosed above and are obvious for those reasons.

Claim 13 further requires that the supplement is made from organically grown ingredients. However, no patentable distinction is seen between chemically made ingredients and organically grown ingredients, as the chemical composition of the particular chemicals is the same. Therefore, it would have been obvious to use organically grown ingredients if desired in place of non-organic ingredients.

The further limitations of claims 14-18 have been disclosed above and are obvious for those reasons.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should


Application/Control Number: 10/783,219

Page 6

Art Unit: 1761

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). Hp 1-12-07


HELEN PRATT
PRIMARY EXAMINER